

REMARKS

Status of the Application

Claims 1-18 are the claims that have been examined in the instant application. Claims 1-2 and 5-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wong (U.S. Patent No. 4,730,112). Claims 3-4 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Allowable Subject Matter

Claims 3-4 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants thank the Examiner for indicating that claims 3, 4 and 18 would be allowable if rewritten in independent form. However, Applicants respectfully request that any rewriting of claims 3 and 4 be held in abeyance until the Examiner has taken the opportunity to reconsider the prior art rejection of the remaining claims.

Claim Rejections - 35 U.S.C. § 102

Claims 1-2 and 5-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wong (U.S. Patent No. 4,730,112).

The Examiner has rejected claim 1 based on an identical argument as was presented in the Non-Final Office Action dated November 20, 2006. Thus, the following comments are

directed toward the Examiner's Response to Arguments found on pages 3-6 of the instant Office Action.

Claim 1 recites, in part, "heating the semiconductor laser with a heater when the semiconductor laser is not in operation." In the Examiner's Response to Arguments, the Examiner alleges that FIG. 14 of Wong discloses that the oxygen measurement laser is operated in the "following sequences: a) Switch 123 closed, switch 117 closed, switch 15 opened to initiate the coarse control system to **heat** the diode laser to the temperature T_c , then b) Switch 123 opened, switch 117 closed, switch 15 opened to initiate the fine control system, and finally c) Switch 123 opened, switch 117 opened, switch 15 closed to initiate the wavelength scanning action used in the absorption measuring process." Page 5 of the instant Office Action. Thus, the Examiner alleges that "the heater provides heat to the diode laser **as if** the diode laser was generating heat when operating (emitting radiation) ... **even though the diode laser 16 is not actually operated.**" Page 5 of the instant Office Action.

Applicants respectfully submit that Wong fails to disclose heating the semiconductor laser ... when the laser is not in operation. Col. 11, lines 24-32 indicates that while the scanning action is disabled by opening switch 15, a voltage is still applied to the diode laser during each of the above steps a)-c), indicating that the laser *is in operation*. For the diode laser to not be in operation, as recited in claim 1, the voltage would need to be removed from the diode laser. Thus, Wong fails to disclose this aspect of claim 1, and claim 1 is patentable over the applied art.

Further, claim 1 recites, "performing one of a first operation of stopping heating of the semiconductor laser and a second operation of decreasing an amount of heat supplied to the

semiconductor laser, almost simultaneously with startup of the semiconductor laser.” In the Response filed April 19, 2007, Applicants argued that Wong failed to disclose this aspect of claim 1. The Examiner has not responded to the substance of Applicants’ argument as required by the MPEP in the instant Office Action. MPEP §707.07(f) requires that “[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the Applicant’s argument and answer the substance of it.” The Examiner has not properly responded to the Applicant’s argument presented on page 4 of the Response filed April 19, 2007, since by simply repeating the previous rejection, the Examiner has not answered the substance of the argument. Thus, because the Examiner has not properly responded to the argument, and because the argument remains unrebutted, claim 1 is patentable at least for the reasons outlined in the Response of April 19, 2007.

Claims 2 and 5-17 are patentable at least by virtue of their dependency from claim 1. With regard to claims 13-16, the Examiner argues that the Examiner’s interpretation of claims 13-16 includes the *heater comprising a heating wire*, not the heater being a heating wire. Thus, since Wong shows a wire connected to the heater 96, the Examiner is interpreting this wire as corresponding to the recited heating wire. See page 6 of the instant Office Action. Applicants respectfully disagree with the Examiner’s interpretation. The language found in claims 13-16 states that at least one element of the heater is a heating wire or heating resistor. Thus, the wire or resistor must generate the heat provided by the heater. Wong fails to disclose that a wire or resistor actually generates the heat provided by the heater. Thus, claims 13-16 are patentable for reasons independent of their dependency.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/Dion R. Ferguson/

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

Dion R. Ferguson
Registration No. 59,561

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: December 11, 2007